

N.D.A.G. Letter to Slorby (March 29, 1988)

March 29, 1988

Mr. Tom Slorby
Ward County State's Attorney
Ward County Courthouse
Minot, ND 58701

Dear Mr. Slorby:

Thank you for your letter of December 30, 1987, concerning whether or not a lounge may serve alcoholic beverages on Sunday pursuant to N.D.C.C. § 5-02-05.2. This question was further discussed and clarified in several telephone conversations held since the arrival of your letter. I apologize for the delay in responding to you.

It is clear from reading the legislative history that the Legislature intended each local jurisdiction to set reasonable rules and regulations concerning the serving of alcoholic beverages on Sunday. Cities and counties possess considerable discretion in determining what constitutes a prepared meal, what establishments satisfy the definition of an eating establishment, and similar factual determinations.

In an attempt to provide guidance in making the above determinations I have previously set forth comments and general observations as a result of reviewing the statute, legislative history, and from general research. For example, in order to ensure good faith compliance with the requirement that the alcoholic beverages be served with a prepared meal, it does not strike me that a pack of peanuts would be good faith compliance with the law. Instead, traditional restaurant settings entail many different menu items and service of sufficient quantities of food to each patron to constitute a meal. While different individuals tend to have different eating habits, the pattern and practice established at that particular establishment will provide some guidance to the local jurisdiction as to whether or not it truly is a restaurant setting or a sham attempt to serve beer and wine on Sunday in violation of the letter or spirit of the law.

Another example would be the average duration of food service. In other words, how much time are patrons spending at the establishment and, of that time, how much time is spent actually eating as opposed to simply drinking beer or wine either before or after the consumption of food? Also, the revenue derived from Sunday food sales over time would prove very enlightening. If an establishment is deriving a disproportionate amount of its revenue on Sunday from the sale of beer or wine as opposed to the sale of food, that should signal whether this establishment is complying with the spirit and letter of the law.

Therefore, while I believe that the question of what parts of a building constitute an "eating establishment" is a factual question for the local jurisdiction to determine, given the legislative intent and history of Senate Bill No. 2380, I do believe local jurisdictions should

make such determinations in strict compliance with the statute and the spirit and legislative intent underlying its enactment.

Sincerely,

Nicholas J. Spaeth

By: Terry L. Adkins
Assistant Attorney General

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